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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-583-848]

Certain Stilbenic Optical Brightening Agents from Taiwan: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) has determined that imports of certain stilbenic optical brightening agents (stilbenic OBAs) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the “Continuation of Suspension of Liquidation” section of this notice.

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Sandra Stewart or Minoo Hatten, AD/CVD

Operations, Office 1, Import Administration, International Trade Administration, U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0768 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION

Case History

On November 3, 2011, the Department published in the *Federal Register* its preliminary determination in the antidumping duty investigation of stilbenic OBAs from Taiwan. *See Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Determination of Sales*

at Less Than Fair Value and Postponement of Final Determination, 76 FR 68154 (November 3, 2011) (*Preliminary Determination*).

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by the participating respondent, Teh Fong Min International, Co., Ltd. (TFM) and its U.S. affiliate, TFM North America, Inc. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the company.¹

We received case briefs submitted by Clariant Corporation (hereinafter, the petitioner) and TFM on January 19, 2012. TFM and the petitioner submitted rebuttal comments on January 26, 2012, and January 27, 2012, respectively. At the request of both parties, we held a hearing on January 31, 2012, in the main Department of Commerce building.

Subsequent to the *Preliminary Determination*, the Department revised the program to ensure that it accurately reflected the methodological choices made in that determination. These revisions to the programming, had they been included in the preliminary determination, would not have altered the weighted average dumping margins calculated there. See “Less-Than-Fair-Value Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan: Final Analysis Memorandum for Teh Fong Min International Co., Ltd. (1/1/2010 - 12/31/2010),” dated concurrently with this notice (Final Analysis Memo) (with the revised preliminary AD margin program, output and weighted-average dumping margins).

¹ See Memorandum to the File entitled “Verification of the Sales Response of TFM North America, Inc. (TFMNA) in the Antidumping Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan,” dated December 20, 2011, Memorandum to the File entitled “Verification of the Sales Response of Teh Fong Min International Co., Ltd. in the Antidumping Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan,” dated December 30, 2011, and Memorandum to the File entitled “Verification of the Cost Response of Teh Fong Min International Corporation in the Antidumping Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan,” dated January 6, 2012.

Period of Investigation

The period of investigation (POI) is January 1, 2010, through December 31, 2010. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2011. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The certain stilbenic OBAs covered by this investigation are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis [1,3,5-triazin-2-yl]² amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.

Excluded from this investigation are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl]³ amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ (“Fluorescent Brightener 71”). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTSUS), but they may also enter under subheadings

² The brackets above denote the chemical formula of the subject merchandise. This is not business-proprietary information.

³ *Id.*

2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the Issues and Decision Memorandum (I&D Memo) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, which is dated concurrently with and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The I&D Memo is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memo can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed and electronic versions of the I&D memo are identical in content.

Targeted Dumping

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: (1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

In the *Preliminary Determination*, based on the methodology we adopted in *Nails*,⁴ as

⁴ *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (*Nails*).

modified in *Bags*⁵ and *Wood Flooring*⁶ to correct certain ministerial errors, we found that the overall proportion of TFM's U.S. sales during the POI that satisfy the criteria of section 777A(d)(1)(B)(i) of the Act was insufficient to establish a pattern of export prices for comparable merchandise that differ significantly among certain customers or regions. Accordingly, the Department determined that the criteria established in 777A(d)(1)(B)(i) of the Act had not been met and applied the average-to-average methodology to all sales.⁷ No party has commented on this determination.

As in the *Preliminary Determination*, for TFM we continue to not find a pattern of export prices for comparable merchandise that differs significantly among customers, regions, or by time period. *See* Final Analysis Memo.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verifications, we have made certain changes to TFM's margin calculation. For a discussion of these changes, *see* memorandum to Neal M. Halper from Gina K. Lee entitled, "Constructed Value Calculation Adjustments for the Final Determination – Teh Fong Min International Co., Ltd. ("TFM")" (Final Cost Memo) and Final Analysis Memo, dated concurrently with this notice.

⁵ *See Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 55183 (October 27, 2009) (unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010)) (*Bags*).

⁶ *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying I&D Memo at Comment 4.

⁷ *See also* Memorandum to Christian Marsh from Susan H. Kuhbach entitled, "Less-Than-Fair Value Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan: Targeted Dumping – Teh Fong Min International Co., Ltd.," dated October 27, 2011.

Date of Sale

Section 19 CFR 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.

TFM reported its sales using shipment date as the date of sale, because shipment occurred prior to invoicing. The petitioner commented that contract date or contract amendment date is the appropriate date of sale for TFM's sales made pursuant to long-term contracts. Based on information on the record concerning these long-term contracts and consistent with the *Preliminary Determination* and *Yieh Phui*,⁸ we find that the date of shipment is the appropriate date of sale. See I&D Memo published concurrently with this notice at Comment 1.

Constructed Value

As was explained in the *Preliminary Determination* (76 FR at 68134-68135), in accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value because TFM did not have a viable comparison market. We calculated constructed value in accordance with section 773(e) of the Act. Because TFM does not have a viable comparison market, in the *Preliminary Determination* we determined selling expenses and profit under section 773(e)(2)(B)(iii) of the Act. In the *Preliminary Determination* we used the profit rate derived from the publicly available financial statements for the fiscal year most contemporaneous with the POI for a company in Taiwan, Everlight Chemical Industrial Corporation (Everlight). We received new factual information concerning the calculation of

⁸ See *Yieh Phui Enterprise Co. v. United States* (Slip Op. 11-107) (August 24, 2011) (*Yieh Phui*).

constructed value profit from parties since the *Preliminary Determination*. After considering the new factual information and comments we received concerning this issue, we find that, for this final determination, it is appropriate to use Everlight's colorants-sector profit to derive the constructed value profit. We have also excluded movement expenses and direct-selling expenses in our calculation of constructed value indirect selling expenses. See the discussion in the accompanying I&D Memo at Comments 2 through 6. See also Final Cost Memo and Final Analysis Memo.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of stilbenic OBAs from Taiwan which were entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated below, as follows: (1) the rate for TFM will be the rate we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 6.20 percent, as discussed in the "All-Others Rate" section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

<u>Manufacturer/Exporter</u>	<u>Weighted-Average Margin (Percent)</u>
Teh Fong Min International Co., Ltd.	6.20

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins

established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. TFM is the only respondent in this investigation for which the Department calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for TFM, 6.20 percent.⁹

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order

⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30755 (June 8, 1999), and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 72 FR 30753, 30757 (June 4, 2007) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007)).

(APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

/PP/

Paul Piquado
Assistant Secretary
for Import Administration

March 19, 2012

Date

Appendix I

Issues in I&D Memo

1. Date of Sale for Long-Term Contracts
2. Constructed Value Profit
3. Constructed Value Selling Expenses
4. Constructed Export Price Profit
5. General and Administrative Expenses
6. Cost Reconciliation

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